

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 SHANFA LI, on behalf of himself and  
5 others similarly situated, and  
6 GUIMING SHAO,

7 Plaintiffs,

8 Case No. 7:16-cv-07787-JCM

9 -vs-

10 CHINATOWN TAKE-OUT, INC.,  
11 doing business as Chinatown Takeout,  
12 and YECHIEL MEITELES,  
13 Defendants.

14 -----x

15 United States Courthouse  
16 White Plains, New York  
17 August 22, 2018  
18 10:44 a.m.

19 Before:

20 HONORABLE JUDITH C. MCCARTHY

21 Magistrate Judge

22 APPEARANCES

23 TROY LAW, PLLC  
24 JOHN TROY  
25 AARON B. SCHWEITZER  
Attorneys for the Plaintiffs

BERNARD WEINREB  
Attorney for the Defendants

1 (Trial commenced)

2 THE COURT: Ready, counsel.

3 MR. WEINREB: Good morning, Your Honor.

4 THE COURT: Good morning.

5 THE DEPUTY CLERK: In the matter of Shanfa Li versus  
6 Chinatown Takeout.

7 Counsel, please state your appearances for the record.

8 MR. SCHWEITZER: Aaron Schweitzer, Troy Law, PLLC for the  
9 plaintiffs, Mr. Li and Mr. Shao.

10 THE COURT: Good morning, Mr. Schweitzer.

11 MR. TROY: Good morning, Your Honor. John Troy for  
12 plaintiffs.

13 THE COURT: Good morning, Mr. Troy.

14 MR. WEINREB: Good morning, Your Honor. This is Bernard  
15 Weinreb on behalf of the defendants.

16 THE COURT: Good morning, Mr. Weinreb. Okay.

17 So the trial is set to start on Monday. We will do all of  
18 these things at that time, but I think today we will just do the  
19 one witness that was unavailable to come, and I think that  
20 Mr. Weinreb's witness.

21 MR. WEINREB: Yes, Your Honor.

22 THE COURT: Okay. So, Mr. Weinreb, you want to call your  
23 witness?

24 MR. WEINREB: Yes, Your Honor. One thing Your Honor  
25 mentioned last time --

1 (Pause)

2 THE COURT: Okay. Mr. Weinreb, you were asking?

3 MR. WEINREB: So when we met with Your Honor last time, I  
4 said that we had to make one correction to proposed findings of  
5 facts and conclusions of law on a date, and Your Honor mentioned  
6 I should put it on the record.

7 THE COURT: Yes.

8 MR. WEINREB: Can I do it now?

9 THE COURT: If you want to do that now, you can.

10 MR. WEINREB: Okay. So on the second page of the  
11 proposed -- our proposed findings of facts and conclusions of  
12 law, on the third line, it says -- it's -- we have a date of  
13 November 2008 that plaintiff, Guiming Shao, worked at Chinatown  
14 Takeout from approximately November 2008, and the date should  
15 read June 24, 2011.

16 THE COURT: June --

17 MR. WEINREB: 24th, 2011.

18 THE COURT: 24th, 2015.

19 MR. WEINREB: 2011.

20 THE COURT: 2011?

21 MR. WEINREB: Yes.

22 THE COURT: So June 24th, 2011.

23 MR. WEINREB: That's the date Chinatown Takeout started,  
24 and they acquired the other business, and that's when they  
25 opened the business, so that's when he worked for Chinatown.

1 MR. SCHWEITZER: To be clear, everybody has agreed that Mr.  
2 Shao worked at the business from before 2011, June 24th.

3 THE COURT: It doesn't matter. That's the case. He  
4 corrected on the record his proposed findings of facts. The  
5 evidence will come in, and determination will be made on that.

6 Okay. I was reviewing your proposed findings of fact,  
7 Mr. Weinreb, and I am pretty sure you would like to make a  
8 correction on the record. If you could turn to page 15 of the  
9 proposed findings of fact.

10 MR. WEINREB: Yes.

11 THE COURT: The first sentence says, "Finally, plaintiffs  
12 made an offer of judgment to plaintiffs on May 26th, 2018." I  
13 am assuming "plaintiffs," it should be "defendants" made an  
14 offer of judgment?

15 MR. WEINREB: Sorry?

16 THE COURT: I am assuming that it should be "defendants  
17 made an offer of judgment," not "plaintiffs made an offer the  
18 judgment."

19 MR. WEINREB: Oh, okay.

20 THE COURT: Is that right or --

21 MR. WEINREB: Yes. Correct. Okay. Thank you.

22 THE COURT: And also, as you continue down your proposed  
23 findings of fact, you write, "If plaintiffs cannot obtain a  
24 judgment in an amount that exceeds the offer of judgment,  
25 defendants are liable for attorney's fees and costs since the

1 time of the offer."

2 Do you mean are not liable?

3 MR. WEINREB: Sorry?

4 THE COURT: Do you mean they are not liable?

5 MR. WEINREB: Next-to-the-last line? Sorry, Your Honor.  
6 Which line are you talking about?

7 THE COURT: Why don't we do to the witness?

8 Between now and next Monday, you read that section and tell  
9 me whatever other corrections -- I think there are two other  
10 corrections that need to be made -- but you can read it and let  
11 me know on Monday.

12 MR. WEINREB: Okay.

13 THE COURT: Okay? And your witness today?

14 MR. WEINREB: The witness is Aryeh Meiteles.

15 THE COURT: If you could come on up and stand right over  
16 there, raise your hand.

17 MR. WEINREB: And I want to thank Your Honor for  
18 accommodating Mr. Meiteles' schedule.

19 THE COURT: I am glad we were able to do it. Thank you.

20 THE WITNESS: Thank you.

21 THE DEPUTY CLERK: Mr. Meiteles, if you could please raise  
22 your right hand?

23 ARYEH MEITELES,

24 called as a witness by the Defendants, having been duly  
25 sworn, testified as follows:

1 THE WITNESS: I do.

2 THE DEPUTY CLERK: Thank you. If you can please have a  
3 seat? State your name and spell it slowly for the record.

4 THE WITNESS: Aryeh Meiteles, A-R-Y-E-H, M-E-I-T-E-L-E-S.

5 THE COURT: Thank you, Mr. Meiteles.

6 Mr. Weinreb, you can begin when you are ready.

7 DIRECT EXAMINATION

8 BY MR. WEINREB:

9 Q. Good morning, Mr. Meiteles.

10 Did you ever work at an establishment called Chinatown  
11 Takeout?

12 A. Yes, I did.

13 Q. And when did you work at Chinatown Takeout?

14 A. From the time that it was bought in 2011, in June of  
15 2011, until September when I left New York, September 2012.

16 Q. And what were your functions at Chinatown Takeout?

17 A. I was the manager.

18 Q. And what did you do as manager?

19 A. Well, I took care of everything that needed to be  
20 taken care of at the restaurant, whether it was front of house  
21 and managing back of house. I took care of the employees in the  
22 front of house. I did the ordering, took the ordering,  
23 purchasing, and customer service.

24 Q. Chinatown Takeout was -- you said it was acquired in  
25 2011, right?

1 A. Yes.

2 MR. TROY: Objection, Your Honor. Leading.

3 THE COURT: What's the objection?

4 MR. TROY: Leading.

5 THE COURT: Leading?

6 MR. TROY: Yeah.

7 THE COURT: Come on, Mr. Troy. This is a bench trial.

8 MR. TROY: Okay.

9 THE COURT: But he is just establishing a foundation about  
10 when it was acquired.

11 MR. TROY: Your Honor, from the beginning, he -- they don't  
12 have any foundation. The first -- the first question he -- they  
13 always: Have you ever worked for Chinatown Takeout?

14 THE COURT: Okay, Mr. Troy.

15 Mr. Weinreb, try to avoid leading questions. You can  
16 continue.

17 BY MR. WEINREB:

18 Q. What was Chinatown Takeout -- what was the  
19 establishment before Chinatown Takeout bought it?

20 A. Before Chinatown Takeout, it was called Walk-In  
21 Take-Out. It was a restaurant that's been there for over 15  
22 years --

23 MR. TROY: Your Honor, leading.

24 THE COURT: Mr. Troy, let the evidence come out. He is  
25 answering the question.

1 MR. TROY: Leading question.

2 THE COURT: Mr. Troy, I want the evidence to come out. I  
3 don't have a jury here. I can weigh it. He is not feeding him  
4 testimony. He is asking him what it was beforehand. Let's get  
5 through the testimony.

6 So prior to Chinatown Takeout, it was what?

7 THE WITNESS: It was called Walk-In Take-Out. It was a  
8 restaurant that's been there for many, many years. I grew up  
9 going to that restaurant as a child.

10 THE COURT: And when it was Walk-In Take-Out, who was it  
11 owned by?

12 THE WITNESS: At the time that it was bought, the Chinatown  
13 Takeout was bought, it was owned by the head chef.

14 THE COURT: Okay. And what was his name?

15 THE WITNESS: Tom. I don't know his full name, but Tom  
16 Chung maybe. Tom.

17 THE COURT: And when was it purchased again?

18 THE WITNESS: In June of 2011.

19 THE COURT: Okay. Mr. Weinreb, you can continue.

20 BY MR. WEINREB:

21 Q. When you established Chinatown Takeout, did you do  
22 anything to obtain --

23 MR. SCHWEITZER: Objection. It's not been stated that the  
24 witness has established Chinatown Takeout.

25 THE COURT: Sustained. Set forth a foundation,



1 Mr. Weinreb. Who established it?

2 BY MR. WEINREB:

3 Q. Did you do anything for the restaurant when you --  
4 when you started working at Chinatown Takeout?

5 MR. SCHWEITZER: And that's leading.

6 MR. WEINREB: Okay.

7 THE COURT: No. It is not leading. Did you do anything  
8 for the restaurant when it was established, when you started  
9 working there, how is that leading? How is that leading?

10 MR. SCHWEITZER: It's a --

11 THE COURT: Your objection is a leading question. How is  
12 that leading?

13 MR. SCHWEITZER: It's asking whether or not he did  
14 something.

15 THE COURT: That's not a leading question.

16 MR. SCHWEITZER: Okay.

17 THE COURT: Leading questions give you answers.

18 THE WITNESS: When the restaurant was purchased, and I  
19 started working as a manager, one of the most important things  
20 that needed to be done was cleanup, which means we gutted part  
21 of the restaurant, and revamped it for a fresh new look. For  
22 15 years prior to that, to buying the restaurant, it was a mess,  
23 which was one of the reasons why it needed to be bought.

24 So we gutted the whole front of the restaurant, which is I  
25 was part of that process, and Tom. And we revamped the POS

1 system; got a new POS system in place. Redid the menus.

2 THE COURT: What's a POS?

3 THE WITNESS: Sorry. Purchase of sale. That's the way we  
4 are able to take orders in the restaurant.

5 THE COURT: Thank you.

6 THE WITNESS: And the -- and I fired some employees from  
7 the front of the house that needed to be. We needed new, fresh  
8 employees because we were getting a fresh name and a fresh look.

9 BY MR. WEINREB:

10 Q. Did any -- did you retain some of the employees from  
11 Walk-In Take-Out?

12 A. The employees that were retained, I will say that from  
13 the front of the house I kept a few people on for the first week  
14 or so just to kind of slow roll into it, but yes, the head chef  
15 kept himself and his -- and the defendant, Mr. Shao, on when we  
16 came in.

17 Q. What's the nature of Chinatown Takeout?

18 A. Chinatown Takeout is a takeout restaurant for a local  
19 community, family community, and its main goal is to -- for  
20 take-out food. That's why our main focus is speed and getting  
21 food out quickly. However, we did offer about 24 seats and  
22 chairs in there for people to eat at their own leisure, clean up  
23 after themselves, and you know, it's just another offer.  
24 Instead of having zero front of house, we did that as a plus.

25 Q. What are the hours of operation of Chinatown Takeout?

1 A. 11:00 a.m. we open the doors, and 10:00 p.m. we close.  
2 We close the kitchen at 9:30.

3 Q. Is there a -- when -- is there a peak time of activity  
4 in the restaurant?

5 A. Yes. There are two peak times: Lunchtime and  
6 dinnertime. Lunch was from 12:00 to 1:00 and dinnertime was  
7 about 5:00 to 7:00.

8 Q. Okay. And what -- and what happened between 1:00 and  
9 5:00?

10 A. 1:00 and 5:00 is a lot of downtime. The restaurant  
11 is, again, a takeout restaurant, so the focus -- well, you have  
12 a couple of stragglers that walk in during that time period, but  
13 it's extremely slow and barely get any customers in there.

14 Q. Why would you keep the -- and -- sorry. And after  
15 7:00, what's it like in the restaurant as far as customers?

16 A. After dinner is over, it gets very slow, down again.  
17 We stay open until 10:00 because of the local community and  
18 competition. It's important that we have the same timeframe as  
19 our surrounding restaurants. However, crunch time is 5:00 to  
20 7:00.

21 Q. Now, you mentioned before that Shao, Guiming Shao, was  
22 one of the employees that started with Chinatown Takeout?

23 A. Yes.

24 Q. What did Shao do? What was his work?

25 A. Shao was there as a -- well, when the restaurant was

1 bought, Shao worked as a cleaner and as backup for prep work.  
2 So when we took on Tom as the head chef, who made very good  
3 food, so we didn't want to lose him. We kept Tom on, and we  
4 kept Shao as well because he would clean the front of the house,  
5 the back of the house, and do the prep work.

6 Q. And what kind of prep work did Shao do?

7 A. Well, chopping some -- chopping the chicken, the  
8 meats, preparing the egg rolls, whatever needed to be done as  
9 prep, during the prep times prior to lunch and dinner --

10 Q. Okay.

11 A. -- aside from cleaning.

12 Q. Now, what was Shao's schedule when you worked at --  
13 when he was there with you?

14 A. So Shao came in every morning with Tom together  
15 because they lived together. He came in in the morning, and he  
16 left -- his time was finished at 8:00 p.m. His time was -- he  
17 was there to start off the morning when we were getting ready  
18 for lunch, and then he then -- about 7:00 when we started  
19 slowing down, I had him go and start cleaning the front of the  
20 house, wiping down the tables if there were customers there and  
21 mopping the floors, rolling up the mat, so that he could be done  
22 by 8:00, which is what his time was for.

23 Q. And how did Shao get to the restaurant?

24 A. Shao came with Tom every day. Part of bringing --  
25 when the restaurant was brought -- bought, Tom said that he was

1 going to take care of his guys, which was Shao at the time, and  
2 he came Shao -- they came together with his car. He came with  
3 Shao and left -- he came with Tom every morning.

4 Q. Who drove who?

5 A. Tom drove. Tom was the lead. He drove and dropped --  
6 and Shao came with him, and then he left with him as well at  
7 night.

8 Q. So when Shao -- let's go backwards to the beginning.  
9 What time did Shao arrive at work?

10 A. 11:15.

11 Q. Okay. And what did he do after he arrived at work,  
12 since he arrived to work?

13 A. As soon as he arrived to work, he actually would go  
14 and put up a pot of rice that he would boil for -- that would  
15 boil for a really long time to be ready for him to eat for  
16 lunch, and then he would start his prep work. The pot of rice  
17 was something that they did long term for -- something that they  
18 did for a long term, he did right away when he walked in. That  
19 was the first thing he did, and then he went, and he started  
20 whatever prep work that needed to be done for lunch.

21 Q. Okay. And how long did he do the prep work for lunch?

22 A. Well, again, a lot of people started walking in 11:50,  
23 12:00. So really just, you know, putting the chicken that was  
24 in the fridge overnight back into the base, you know, in the  
25 kitchen area on the lines. Excuse me. And, you know, take the

1 vegetables out of the refrigerator and just set up for -- you  
2 know, him and Tom would set up for lunch. That took about half  
3 an hour.

4 Q. Okay. And after he did the prep work for lunch, did  
5 he do anything else?

6 A. No. Then lunch started, and his job at that point,  
7 once lunch started, was to -- was to clean, to do the dishes  
8 because Tom had to use the wok and the different pots, and  
9 because we didn't have many of them, it was constantly moving.  
10 When you deal with Chinese food, you are constantly using the  
11 pots and pans, and he -- woks and pans. And he -- he would have  
12 to clean them right away and scrub them and clean as we go. So  
13 he was constantly moving during that time, during lunchtime.

14 Q. Okay. And --

15 A. And as well -- excuse me. As well as we did have  
16 customers who would eat and leave food on the tables. You know,  
17 I would call him to the front and tell him if we had a spill, I  
18 would tell him to bring the mop and please clean the front.

19 Q. You mentioned previously that after lunchtime, after  
20 crunch time, it became very quiet. So what did -- what was Shao  
21 doing at the time that it was quiet in the restaurant?

22 A. Well, after lunchtime subsided at that point, he took  
23 his hour break and would eat lunch. That's when he would eat  
24 the food that he prepared when he first walked in. He took an  
25 hour break, which, you know, he usually sat in the front of the

1 house. It was quiet. Nobody was really there. He would sit  
2 there with a magazine, just relax, wait until, you know, things  
3 came up later on; and then after -- after he finished his lunch,  
4 he'd get back up and just kind of sit in the back behind the  
5 kitchen. We have -- where our storage is, there is a chair  
6 there, and he would sit there and kind of hang out. He would go  
7 to the back and smoke, or the front and smoke; just really just  
8 a lot of down time. I wish it wasn't the case, but there was a  
9 lot of down time until dinner was ready.

10 Q. And when did the down time stop?

11 A. Well, dinner was at 5:00, so I would say about 4:45,  
12 he would get up and just, you know, we would -- again, take-out  
13 is getting ready for the rush that comes in, do the same thing  
14 we did in the morning prior to lunch, which was just putting the  
15 food, meat, where it belonged and, you know, the dishes were  
16 prepared and then the rush just came real fast.

17 Q. Okay. Then there was the evening rush you mentioned  
18 before, right?

19 A. Correct.

20 Q. What happened -- what time did the evening rush stop?

21 A. Evening rush stopped at 7:00. That's really when our  
22 customers -- 7:00, 7:15 is when it just really started dying.

23 Q. And then what happened? What did Shao do after the  
24 evening rush?

25 A. Well, after the evening rush was done, you know, his

1 job was to finish off clearing off, you know, if it was busy, he  
2 would make sure everything was washed and cleaned properly, and  
3 then I would have him mop the floors and get everything done by  
4 8:00. Say about 45 minutes to take care of the cleaning, which  
5 was more than enough time.

6 Q. Okay. And what time did he finish this mopping up?

7 A. 8:00. He was done by 8:00.

8 Q. And did Shao work past 8:00?

9 A. Shao did not work past 8:00.

10 Q. And was he free to go after 8:00?

11 A. Shao was definitely free to go. However -- he could  
12 have gotten however he wanted to go home with a taxi in the  
13 area, but he just stuck around with Tom because Tom was his ride  
14 home. So it was a free ride home for him. Instead of taking a  
15 bike or taking a bus or whatever it was, he would stick around  
16 and wait for Tom.

17 Q. And what was your agreement or understanding with Shao  
18 as far as from when to when Shao works every day?

19 A. 11:00 to 8:00.

20 Q. And when you say 11:00 to 8:00, it's which days of the  
21 week is it?

22 A. Sunday through Thursday, and then Friday from 11:00 to  
23 2:00. We close at 2:00 on Fridays.

24 Q. Other than the hour lunch break that Shao took, did  
25 Shao take any other --



1 A. Yeah. Of course. He had a half hour dinner break  
2 when he was able to eat dinner, so that would he typically do it  
3 right before the rush started at 4:30, 4:45, and sit down, and  
4 he'd also sit down in front of the house to make his food in the  
5 wok or Tom would make it for him, and he would eat, you know,  
6 meat, chicken, whatever we had there. He was waiting for that.

7 Q. And Friday -- Friday you mentioned before that he  
8 worked from 11:00 to 2:00?

9 A. Yes. But, again, Friday was -- we were really just  
10 open Friday -- it's a Kosher Chinese takeout. So Friday is Erev  
11 Sabbath is the day before Sabbath, so most people are running  
12 around. There is a very small lunch crowd that comes in, some  
13 of the workers in the area, but he, you know, he took his lunch  
14 as well Fridays. He made sure that he ate.

15 Q. When you mentioned before that Shao, the first thing  
16 he did was cook. He cooked himself a pot of rice, right?

17 A. Uh-huh.

18 Q. Could you tell me like what he did as far as cooking  
19 this rice? How did he cook this rice?

20 A. Well, actually, in order for him to cook the rice, I  
21 had to turn on the fire. Part of owning a Kosher restaurant, we  
22 have to have a Kosher certificate through a big establishment in  
23 the community, and he had to -- the first thing I did when I  
24 walked in, I had to turn on all the fires. So he wasn't allowed  
25 to do anything until I started the fires. It's just a Jewish

1 law; that it has to be done by an Orthodox Jew.

2 Q. And then you turned on the fires for him, and then --

3 A. Actually, I had a few things I had to do as part of  
4 this being the Orthodox Jew on campus, let's say. I had to turn  
5 on all the fires for everybody, turn on the hot water, turn on  
6 the rice cooker. We also have rice cookers. He boiled it in a  
7 pot. I had to turn on his special flame that he had, and turned  
8 on the rice cookers for Tom, and then I would go crack eggs. I  
9 had to crack the eggs. I had to cut the onions a certain way  
10 and clean the celery sticks. Those are things I had to do prior  
11 to coming in, one of those was turning on the fires as well.

12 Q. Okay. Who had the keys to the establishment?

13 A. I was the only person who had the keys aside from the  
14 owner because another part of our Jewish law is that the  
15 Orthodox Jew has to open the doors and is the only person  
16 allowed to have the keys. Even if I had any employees, I  
17 couldn't allow them to have the keys. Otherwise, we would lose  
18 our certificate, and we wouldn't be in business without that  
19 certificate.

20 Q. What did Shao do after 8:00?

21 A. He was free to go. He was inside, outside, back.

22 Q. Do you know why Shao waited around the restaurant?

23 A. In my opinion, he was living with Tom, so it was an  
24 easy ride home, and they lived in Spring Valley. So not that  
25 was too far, he could, you know, have gotten his own way home.

1 However, he chose to wait for Tom.

2 Q. Is the restaurant open every day of the year, other  
3 than Saturday? You mentioned it was closed on Saturdays.

4 A. Aside from Saturdays, because of Jewish law, there are  
5 many holidays throughout the year we are closed as well for long  
6 periods of time, the longest being about nine days.

7 Q. And which holidays are we talking about?

8 A. A lot of them. I could list all of them. There is  
9 Rosh Hashanah, which is the high -- part of the High Holidays.  
10 Rosh Hashanah and Yom Kippur. So Rosh Hashanah is a two-day  
11 holiday, which is like the Sabbath. So mostly any holidays that  
12 I am mentioning where we are closed is because it's the same  
13 laws as the Sabbath, which is you can't drive, you can't write,  
14 you can't -- you can't operate a business. It's really just  
15 going to synagogue and having family time. You walk to  
16 synagogue, et cetera.

17 So that being said, every Jewish establishment is  
18 closed and has to be closed, again, in order to keep that  
19 certificate. We have to shut down for the Jewish holidays.

20 So Rosh Hashanah, Yom Kippur, Sukkot, which is an  
21 eight-day holiday, Passover, which is an eight-day holiday.  
22 There is nine days during the summer that we are not allowed to  
23 eat meat. That's another Jewish holiday where we only eat dairy  
24 for nine days, so we would be closed. That would be a --

25 THE COURT: What's that holiday called?

1 THE WITNESS: It's actually called The Nine Days.

2 THE COURT: Okay.

3 THE WITNESS: Yes. It's call The Nine Days.

4 THE COURT: And Rosh Hashanah you close for how long?

5 THE WITNESS: Three days.

6 THE COURT: Three days? And Yom Kippur you are closed for  
7 how long?

8 THE WITNESS: Two days, the day of Yom Kippur and the day  
9 prior. Purim is our Halloween.

10 THE COURT: Sukkot is eight days?

11 THE WITNESS: Sukkot is eight days.

12 THE COURT: Passover is eight days?

13 THE WITNESS: Passover is eight days.

14 THE COURT: Nine Days in summer?

15 THE WITNESS: Nine Days in summer, and then there is  
16 Shavuot, which is in June time, which is -- it's a three days.

17 THE COURT: How do you spell that?

18 THE WITNESS: S-H-A-V-U-O-T.

19 THE COURT: And how many days is that?

20 THE WITNESS: Three.

21 THE COURT: Three. Okay.

22 THE WITNESS: Then we have fast days. So the fast days we  
23 are only open about three hours in the evening time because  
24 there is no reason to spend the money and stay open when nobody  
25 can eat. So what we did was we would not -- you are able to eat

1 at nighttime. Once nightfall hits, we open about three hours  
2 prior and just kind of do some prep for dinners and have some  
3 take-out orders if people wanted to break the fast on the fast  
4 day.

5 THE COURT: And how many fast days are there?

6 THE WITNESS: There are -- I think there is six all  
7 together. Three of them are incorporated into what we just  
8 discussed, those holidays, and another three -- there are  
9 another three.

10 THE COURT: Three standalone?

11 THE WITNESS: Three standalone, yes.

12 BY MR. WEINREB:

13 Q. Are there any festive days that you close besides the  
14 holidays?

15 A. Aside from The Nine Days and the holidays, there is  
16 also -- sorry. There is a lot of holidays we have. There is  
17 also a holiday called Purim, which is like our Halloween, per  
18 se, and we are closed for two days there, especially because  
19 everybody is out the entire day with their families quote,  
20 unquote "trick-or-treating" with their families, and then there  
21 is like a big meal in the afternoon. So we would close those  
22 two days as well.

23 MR. WEINREB: Okay. I'd like to show you a calendar, and I  
24 will ask him questions about that if I may.

25 THE COURT: Sure.

1 MR. WEINREB: If I -- I think it's in evidence. It's in  
2 evidence at this point.

3 THE COURT: Well, you have to move it into evidence. I  
4 don't think there is any objections to it, but --

5 MR. WEINREB: Right.

6 THE COURT: -- it's been marked, but you need to move it  
7 into evidence.

8 MR. WEINREB: Okay.

9 BY MR. TROY:

10 Q. Let me show you a calendar covering the period January  
11 of 2011 through December 2016.

12 A. Okay.

13 MR. TROY: May I have a copy, Your Honor?

14 What is the evidence? Do you permit someone to ask the  
15 question? Okay. What is the evidence?

16 MR. WEINREB: It's --

17 THE COURT: It's Defendant's Exhibit A, the Jewish calendar  
18 for the years 2011 to 2016.

19 MR. WEINREB: Okay. Again, I wanted to admit this calendar  
20 into evidence.

21 THE COURT: Mr. Troy? Mr. Schweitzer? Any objections?

22 MR. TROY: No, Your Honor.

23 THE COURT: Okay. Defendant's Exhibit A is admitted into  
24 evidence.

25 You can proceed, Mr. Weinreb.

1 (Defendant's Exhibit A received in Evidence)

2 BY MR. WEINREB:

3 Q. So the covered period of time that you were working at  
4 Chinatown Takeout --

5 A. Sure.

6 Q. -- so which period of time did you work at Chinatown  
7 Takeout?

8 A. Starting from June 2011.

9 Q. Through?

10 A. Through August 2012, September 2012.

11 Q. Okay. So we will start with the week of June 19th  
12 because that's the first -- that's the first week that you --  
13 that Chinatown Takeout -- that you owned Chinatown Takeout or  
14 you were --

15 A. Correct.

16 Q. -- it was established?

17 A. Correct.

18 Q. Okay. So well, that week it started on Friday. Let's  
19 start the next week. The week of June 26th, how many -- how  
20 many days was the -- how many days was the restaurant opened  
21 that week?

22 A. The full week.

23 Q. The week of July 3rd, how many days was the restaurant  
24 open?

25 A. The full week.

1 Q. The week of July 10th, how many days was the  
2 restaurant opened?

3 A. Full week.

4 Q. The week of July 17th?

5 A. July, that week on the 19th was one of those three  
6 fast days I was telling you earlier, and that's when we opened  
7 just around three hours.

8 Q. And the week of July 24th, how many --

9 A. Full week.

10 Q. How many days? Full week. Okay. And now the week  
11 of --

12 THE COURT: When you say "full week" --

13 THE WITNESS: Monday through Thursday and Friday.

14 THE COURT: And three hours on Friday, Sunday through  
15 Thursday.

16 THE WITNESS: Sorry. Yes.

17 THE COURT: Three hours on Friday, closed on Saturday,  
18 closed on Friday at what time?

19 THE WITNESS: At 2:00.

20 THE COURT: At 2:00. Thank you.

21 THE WITNESS: Correct.

22 BY MR. WEINREB:

23 Q. Okay. The week of -- the week starting July 31st, how  
24 many days were you open that week?

25 A. July 31st, we were open one day. That was The Nine



1 Days -- that was what I was talking about earlier, The Nine  
2 Days.

3 Q. Which day were you open?

4 A. So we were open only on Sunday of that day. Monday,  
5 Tuesday, Wednesday, Thursday, Friday we were closed.

6 Q. And why were you closed that week?

7 A. That's one of those Jewish holidays where we are not  
8 allowed to have any meat, and that's actually a typical vacation  
9 time for our employees. I think most employees, they know this  
10 prior, so this is when they would take vacation during these  
11 nine days.

12 THE COURT: That's August 1st to the 9th?

13 THE WITNESS: Correct.

14 BY MR. WEINREB:

15 Q. And in the restaurant --

16 THE COURT: 2011?

17 THE WITNESS: 2011. Correct. And actually, on the ninth  
18 is one of those fasts I was telling you about. That's  
19 incorporated in the three.

20 THE COURT: Okay.

21 BY MR. TROY:

22 Q. And the restaurant's -- what type of food did the  
23 restaurant serve?

24 A. We are a meat restaurant, strictly meat. Kosher  
25 separates meat and dairy. We were meat.

1 Q. The week starting August 7th, how many days did the  
2 restaurant close?

3 A. We were closed 7, 8 and 9, so we were only opened two  
4 and a half days, Wednesday, Thursday, Friday.

5 Q. And the week starting August 14th?

6 A. Full week.

7 Q. The week starting August 21st?

8 A. Full week.

9 Q. The week starting August 28th?

10 A. Full week.

11 Q. The week starting September 4th?

12 A. Full week.

13 Q. The week starting 20 -- on September 11th?

14 A. Full week.

15 Q. The week starting September 18th?

16 A. Full week.

17 Q. The week starting September 25th?

18 A. So that was a short week. We were only open three  
19 days that week. We were closed Wednesday, Thursday, Friday for  
20 the High Holidays of Rosh Hashanah.

21 Q. Going to week starting October 2nd.

22 MR. TROY: 2011?

23 MR. WEINREB: Sorry?

24 MR. TROY: October 2nd which year?

25 THE COURT: 2011.

1 MR. WEINREB: Everything is 2011 going --

2 MR. TROY: Okay.

3 BY MR. WEINREB:

4 Q. October 11th, how many days did you work the week --  
5 was the restaurant open October 11th?

6 A. Well, October 2nd was Tzom Gedalia, which is one of  
7 the three fasts I was telling you about. That was a short day,  
8 so we were open for three hours toward the end of the day.

9 And then we were closed on Friday, for the day before  
10 Yom Kippur, which is another High Holiday. So we were open for  
11 Monday, Tuesday, Wednesday, Thursday, and part of Sunday.

12 Q. And the week starting the 9th October?

13 A. We were only open three days that week because that's  
14 where we have the other holiday, Sukkot. So we were open for  
15 Sunday, Monday, Tuesday. We were closed on the 12th, which is  
16 the day before, 13th and 14th.

17 Q. And the week starting the October 15th -- 16th? I am  
18 sorry.

19 A. So the week of October 16th, part of this holiday,  
20 three of those days you are allowed to pretty much not be  
21 subject to the laws of no driving. Although it's still a  
22 holiday, you are allowed to drive. You are allowed to go out,  
23 still part of the holiday of Sukkot. However, right after that,  
24 on the 19, 20 and 21, it kind of restarts where it's Simchat  
25 Torah and Shemini Atzeret, which means another holiday you can't

1 drive. So we were closed those three days as well, 19, 20 and  
2 21.

3 Q. Okay. The week starting October 23?

4 A. Full week we were open.

5 Q. Week starting October 30th?

6 A. Full week we were open.

7 Q. The week starting November 6th?

8 A. We were open a full week.

9 Q. And November 13th?

10 A. Full week.

11 Q. November 20th?

12 A. Full week.

13 Q. November 27th?

14 A. Full week.

15 THE COURT: You would be open on the holiday of  
16 Thanksgiving?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Okay.

19 THE WITNESS: We do good business on that holiday.

20 THE COURT: Okay.

21 BY MR. WEINREB:

22 Q. The week starting December 4th?

23 A. Full week.

24 Q. The week starting December 11th?

25 A. Full week.

1 Q. The week starting December 18th?

2 A. It was a full week. That was actually the holiday of  
3 Hanukkah, which is the eight crazy nights. I don't know if  
4 people have seen the movie, but it's where we get a lot of  
5 presents, but yeah, we were open during that holiday. It's a  
6 festive holiday, and we do a lot of business.

7 Q. And the Jewish law --

8 A. You are -- no, it's one of the holidays you are  
9 allowed to be driving around and doing things.

10 Q. The week starting December 25th?

11 A. Full week.

12 Q. The week starting January 1st?

13 THE COURT: Of 2012.

14 MR. WEINREB: 2012. I am sorry.

15 THE WITNESS: That was a full week, aside from Thursday,  
16 which is one of those three fasts I was talking to you about.  
17 It started with Tevet, and that is all --

18 (Reporter clarification)

19 THE WITNESS: Sorry. I apologize. The Hebrew name of the  
20 fast day.

21 BY MR. WEINREB:

22 Q. The week starting January 12th? January 8th, I am  
23 sorry?

24 A. Full week.

25 Q. January 15th?

1 A. Full week.

2 Q. January 22nd?

3 A. Full week.

4 Q. January 29th?

5 A. Full week.

6 Q. January -- February 5?

7 A. Full week.

8 Q. February 12th?

9 A. Full week.

10 Q. February 19?

11 A. Full week.

12 Q. February 26th?

13 A. Full week.

14 Q. March 4th?

15 A. March 4th we were closed. This is for that festival,  
16 the Halloween holiday I was telling you about, so we were closed  
17 for the 7th, 8th and 9th for Purim, P-U-R-I-M.

18 Q. Okay. March 11th?

19 A. Full week.

20 Q. March 18th?

21 A. Full week.

22 Q. March 25th?

23 A. Full week.

24 Q. April 1st?

25 A. So April, for the week of April 1st, 2012, was the

1 start of -- Friday, the 6th was the start of Passover, another  
2 very intense Jewish law. Passover you are not allowed to eat --  
3 it's a very specific dietary holiday, which means that we had to  
4 close down our restaurant because the foods that we offer are  
5 not allowed to be eaten on that holiday, Passover. So we were  
6 closed starting the 6th through the 14th.

7 Q. What -- what particularly weren't you allowed to eat  
8 during Passover that forced you to close the restaurant during  
9 Passover?

10 A. Rice is actually the main thing. We are not allowed  
11 to eat a lot of items. It's a difficult question to answer.  
12 There is a lot of items we are not allowed to eat, but the main  
13 things that you are not allowed to have, I mean, the Chinese  
14 cookies that we offer. The -- you can't have flour, and the  
15 rice you are not allowed to have. So we had to -- we are forced  
16 to shut down.

17 Q. April 15th?

18 A. The full week.

19 Q. April 22nd?

20 A. Full week.

21 Q. 29th?

22 A. Full week.

23 Q. May 6th?

24 A. Full week.

25 Q. May 13th?

1 A. Full week.

2 Q. May 20th?

3 A. May 20 was a full week. Around Saturday started the  
4 holiday of Shavuot that I was telling you about, so although it  
5 started Saturday, it doesn't matter, but we were closed the  
6 following week on Sunday, Monday for that holiday called  
7 Shavuot, which is the 27 and 28th.

8 Q. June 3rd?

9 A. Full week.

10 Q. June 10th?

11 A. Full week.

12 Q. June 15th?

13 A. Full week.

14 Q. And June 24th?

15 A. Full week.

16 Q. July 1st?

17 A. Full week.

18 Q. July 8th?

19 A. July 8th is one of those fasts that we fast, so we  
20 were open for three hours in the evening.

21 Q. Okay. July 15th?

22 A. July 15th came around. That week came again The Nine  
23 Days, which started on Friday the 20th and went through the  
24 entire next week, including the 29th. So the week of the 22nd  
25 we were closed. July 20th we were closed. And July 29th we



1 were closed.

2 Q. Can you tell us again why you can't be open during The  
3 Nine Days?

4 A. The Nine Days we are not allowed to have -- to eat  
5 dairy. We are not -- sorry. We are not allowed to have any  
6 meat, only dairy.

7 Q. Okay. The week of July 29th?

8 A. Closed on Sunday.

9 Q. August 5th?

10 A. Full week.

11 Q. Week of August 12th?

12 A. Full week.

13 Q. August 1st?

14 A. Full week.

15 Q. Week of August 26th?

16 A. Full week.

17 Q. And the week of September 2nd?

18 A. Full week.

19 Q. And at that point you went up?

20 A. It was September. Correct. Mid September.

21 Q. And what about the other Jewish establishments? Are  
22 they also closed during all of these days that you mentioned?

23 A. Yes. There are some that are meat restaurants that  
24 are open on the Passover holiday because they keep specific  
25 dietary restrictions, and then there are -- all dairy

1 restaurants are open. So it's actually a big business time for  
2 all the dairy restaurants to make a lot of money during those  
3 Nine Days.

4 Q. Right. But even the ones that are open during  
5 Passover, they are not open all days of Passover, correct?

6 A. Correct. Passover is an eight-day holiday like Sukkot  
7 that I mentioned earlier where it's the first few days, and the  
8 last few days are like the Sabbath, and there is three days you  
9 are allowed to be open.

10 Q. Did you ever drive to the restaurant on one of these  
11 holidays that you may not drive?

12 A. No. I am an Orthodox Jew. I am not allowed to drive.

13 Q. Were you ever present in the store during any of those  
14 days?

15 A. No. We are not allowed to be open.

16 Q. What was your -- what was your relationship with Shao?

17 A. I had a great relationship with Shao, actually. I  
18 think he was a good worker. He knew what to do, and we -- I was  
19 shocked this happened because we treated him very well from the  
20 minute we took over the restaurant. He was an employee there  
21 prior to taking it on, and we treated him like family. I mean,  
22 him and I actually had a good relationship as a manager and  
23 employee, him cleaning the house. We were close.

24 Q. Did you overlap with the other plaintiff Li?

25 A. I had never met Mr. Li.

1 MR. WEINREB: Okay. I have no further questions, Your  
2 Honor.

3 THE COURT: I have a couple of questions before cross  
4 begins.

5 The first question is: You have used the phrase "front  
6 house", "back house" a few times. Can you tell me what front  
7 house and back house is?

8 THE WITNESS: Yes. The restaurant is actually split up by  
9 a counter, so the front of house in restaurant terminology means  
10 the employees that work the computer system, and the employees  
11 that deal with the customers, and that's actually the front of  
12 the restaurant where people come in, walk through, sit down or  
13 eat or place orders.

14 Back of house in restaurant terminology means the kitchen.  
15 So because I was full manager of the whole restaurant. Some  
16 restaurants have a back-house manager, front-house manager. I  
17 was manager for the whole restaurant, so back of house was my  
18 responsibility as well, which included purchasing, ordering,  
19 making sure the staff is okay, and taught them what needed to be  
20 done.

21 THE COURT: Okay. Another thing you said under Kosher law  
22 you had to turn on all the fire, and turn on the rice cooker,  
23 also said you cracked eggs and cleaned the celery sticks. Why  
24 did you have to do -- I understand -- tell me why you had to do  
25 all of those things. I think -- I mean, I understand the fire,

1 but the celery sticks --

2 THE WITNESS: Of course.

3 THE COURT: -- and the eggs are new to me, but tell, for  
4 the record, just explain all of that.

5 THE WITNESS: Of course. So part of being Kosher, there  
6 are a lot of laws that come into play into being Kosher. Kosher  
7 meat everyone knows is blessed by a rabbi, salted and, you know,  
8 killed in a very humane way, and the list could go until  
9 tomorrow about the Kosher laws of food.

10 However, some of those laws -- so basically whatever food  
11 you have in your restaurant, the people who give you the  
12 certificate go through your restaurant and tell you what sort of  
13 things need to be done.

14 I was actually certified by that organization as an  
15 Orthodox Jew on campus to -- all the time to be able to do those  
16 certain duties, which were: You had to break the eggs. I had  
17 to look for blood spots, so I had to check each egg and make  
18 sure there wasn't a blood spot, and I put it into a bin. So any  
19 eggs that they used were all in a bowl in a tub that I had  
20 checked already; every single egg, and if I found a blood spot,  
21 that's an important thing to do.

22 The celery, it comes on a head, and we can -- we are not  
23 allowed to eat bugs, so lettuce and celery have to be checked.  
24 I didn't mention the lettuce -- the bok choy, but I had to clean  
25 that as well, the lettuce on -- over a light and have it rinsed

1 in soap and water. And so the celery I would basically cut the  
2 bottom, rinse off, clean all the dirt off the bottom and make  
3 sure there was no bugs on it, and put it into a separate bin.

4 And then the onions, I had to make sure that there was -- I  
5 had to cut off one end of the onion and make sure that it wasn't  
6 juicy and that it was tight, you know, the rings were tight  
7 together so that no bugs could go inside there. It has to do  
8 with health and Jewish law about not eating bugs and making sure  
9 the food is still good.

10 THE COURT: Now the other prep work that had to be done,  
11 which is cutting celery up into pieces that were going to be put  
12 into a dish, you know, cutting the onions further, cutting the  
13 meat, various things, who did that?

14 THE WITNESS: Shao and the chef.

15 THE COURT: And when did they do that?

16 THE WITNESS: During the prep time that I had mentioned.

17 THE COURT: Okay.

18 THE WITNESS: So again, a lot of stuff could be done --

19 THE COURT: Because when you testified, you said they came  
20 in in the morning, and they took out the stuff and put it in the  
21 line. So --

22 THE WITNESS: And Shao did the prep work during that time,  
23 during those 45 minutes.

24 THE COURT: Was the prep work done the day before, the  
25 night before for the next morning or --

1 THE WITNESS: No. No. There wasn't a need for it, no,  
2 because everything is very fresh. Everything has to be cut  
3 fresh, and you don't want onions sitting around for two days.  
4 Every onion was cut every day. You know, the meat, obviously --

5 THE COURT: So they only need 45 minutes to prep for the  
6 rush?

7 THE WITNESS: Yes. Because there is not -- I mean, there  
8 is not a lot of -- again, it's certain things you are allowed to  
9 keep in bulk. For example, the chicken and sauces and the --  
10 you know, the big packs of broccoli and all that. That's  
11 already done, and that's kept in the refrigerator in big  
12 buckets.

13 The eggs, you know, I had to crack the eggs every morning  
14 and what's left over, you know, we threw out the eggs, but I  
15 crack all the eggs, and so yeah, it really doesn't take a lot of  
16 time. And it was two people. I mean, Tom, obviously, did a lot  
17 as well.

18 THE COURT: Yes.

19 THE WITNESS: Two men.

20 THE COURT: And then you left in September of 2012. Did  
21 you leave the area or just stop working in the restaurant?

22 THE WITNESS: I left. I moved to Florida with my wife.

23 THE COURT: Okay.

24 THE WITNESS: And I kept -- obviously I -- you know, I kept  
25 tabs with the restaurant as well because I was -- you know, I

1 dealt with first whatever I had to do remotely. I would do  
2 remotely watch the cameras or whatever had to be done.

3 THE COURT: Okay. Okay. Thank you. Thank you for  
4 answering the questions.

5 THE WITNESS: Thank you.

6 THE COURT: So for cross, Mr. Troy or Mr. Schweitzer? Who  
7 is going to conduct the cross-examination?

8 MR. TROY: Your Honor, can we have five-minutes break?

9 THE COURT: A very short five-minute break. Okay?

10 MR. TROY: Sure.

11 THE COURT: Thank you.

12 (Break taken.)

13 THE COURT: You can take the stand.

14 Mr. Schweitzer, whenever you are ready, you can start your  
15 cross-examination.

16 CROSS-EXAMINATION

17 BY MR. SCHWEITZER:

18 Q. So before I begin, I will remind you, you are still  
19 under oath.

20 A. Yes.

21 Q. Have you ever been a witness in a lawsuit before?

22 A. No.

23 Q. Have you ever been a party to a lawsuit before?

24 A. No.

25 Q. What is your current occupation?

1 A. I finance commercial real estate.

2 Q. And you live in Florida, correct?

3 A. Yes.

4 Q. Do you have any family there?

5 A. Yes.

6 Q. Who?

7 A. My wife, two kids, and my wife's family.

8 Q. And you traveled from Florida to New York to testify  
9 today?

10 A. Yes.

11 Q. And how did you get from Florida to New York?

12 A. I flew.

13 Q. Do you have the airline ticket?

14 A. Yes.

15 Q. Do you have it with you today?

16 A. In my phone downstairs.

17 Q. When was the last time you came back to New York from  
18 Florida before today?

19 THE COURT: What's the relevance?

20 MR. SCHWEITZER: I am getting at the time he worked at the  
21 restaurant.

22 THE COURT: You can answer.

23 THE WITNESS: I was here three weeks ago for my brother's  
24 engagement party.

25 BY MR. SCHWEITZER:



1 Q. And during that time, did you visit the Chinatown  
2 Takeout restaurant?

3 A. Yes.

4 Q. And prior to the visit three weeks ago, about how  
5 often did you visit the Chinatown Takeout restaurant?

6 A. Full-time job and family, whenever I come to New York,  
7 I visit the restaurant. I can't give a number to that.

8 Q. About how often --

9 A. Throughout the year.

10 Q. More than five times a year?

11 A. No. Maybe five, six times a year, holidays. Every  
12 year is different depending on the holiday. I switch off with  
13 my in-laws, depending on the holiday.

14 Q. So since the time you stopped working at Chinatown  
15 Takeout restaurant and moved to Florida, you have visited the  
16 Chinatown Takeout about five to six times every year?

17 A. Yes.

18 Q. Okay. When did you start financing real estate  
19 transactions?

20 A. I start working for my company five years ago.

21 Q. And what did you do before that?

22 A. I worked at the restaurant.

23 Q. You started working at your current company directly  
24 after you moved to Florida?

25 A. No. I moved to Florida for a job in wealth

1 management, and three -- three months after I got there, they  
2 shut down the firm.

3 Q. And then you started working at your current job?

4 A. Uh-huh.

5 Q. Did you have any other employment during the time from  
6 June --

7 MR. WEINREB: Objection.

8 MR. SCHWEITZER: -- in 2011 to --

9 MR. WEINREB: Objection.

10 THE COURT: I am going to let the question be asked before  
11 I rule on.

12 BY MR. SCHWEITZER:

13 Q. Did you have any other employment during the time from  
14 June of 2011 until September of 2012?

15 A. I worked full time at the restaurant.

16 Q. By "full time" meaning every day the restaurant was  
17 open?

18 A. I had to be. I had the key.

19 Q. From opening to closing time?

20 A. Yes.

21 Q. Okay. And while you were working at Chinatown Takeout  
22 restaurant, did any -- did your father also work there?

23 A. No.

24 Q. While you were working at Chinatown Takeout --

25 A. He is the owner, so whatever owner's capacity is, but

1 I was the manager.

2 Q. And while you were working at Chinatown Takeout  
3 restaurant, did any of your siblings work with you?

4 A. At the time, no.

5 THE COURT: I didn't hear. Darby, what was the answer?

6 (Record read.)

7 THE COURT: Thank you.

8 THE WITNESS: I am sorry.

9 BY MR. SCHWEITZER:

10 Q. While you were working at Chinatown Takeout  
11 restaurant, you gave front-of-the-house employees instructions  
12 on how to do their jobs?

13 A. Yes.

14 Q. And you also did the same for back-of-the-house  
15 employees?

16 A. Yes.

17 Q. Do you speak Mandarin?

18 A. No. Tom does.

19 Q. And --

20 A. Tom is the head chef.

21 Q. But you could communicate with any Mandarin-speaking  
22 employees besides Tom?

23 A. Well, Shao and I communicated via sign language,  
24 smiles and hand motions.

25 Q. But could you talk language with any other --

1 A. I don't speak Mandarin.

2 Q. Would you use Tom to interpret between yourself and  
3 other Mandarin-speaking employees?

4 A. Yes.

5 Q. And that included Mr. Shao?

6 A. Yes.

7 Q. And when you used Tom to communicate between yourself  
8 and other Mandarin-speaking employees, you didn't understand the  
9 things that he was saying in Mandarin, did you?

10 A. Correct.

11 Q. Okay. While you were working at Chinatown Takeout  
12 restaurant, did you keep the books and records for the business?

13 A. No.

14 Q. Did you take money out of the cash register each  
15 evening?

16 A. At the end of the night, yes.

17 Q. And you took that money out of the register to be  
18 counted, correct?

19 A. Counted and put into a safe, yes.

20 Q. Where was the safe?

21 A. In the restaurant.

22 Q. Did the cash on hand in the restaurant ever leave the  
23 restaurant?

24 A. No. Only when it was taken out by the owner.

25 Q. How often was the cash taken away from the restaurant

1 by the owner?

2 A. Every other day, every two days in the morning, go to  
3 the bank.

4 Q. Did you count the money or did the owner count the  
5 money?

6 A. I counted. As the manager, part of my responsibility  
7 was to count that and match it up to the days.

8 Q. And did you keep a written record of how much cash on  
9 hand Chinatown Takeout had every day you counted?

10 A. That I took a record? No. The system has whatever  
11 reports they have. I didn't keep any records. All I did was  
12 count the money, make sure it matched the number in the report  
13 and put it into the safe.

14 Q. And by "the report," you are referring to the  
15 point-of-sale system?

16 A. Yes. The daily report. You go to the daily report;  
17 you have to match up so the numbers are even.

18 Q. The point-of-sale system recorded cash transactions as  
19 well as credit?

20 A. Yes. I assume so, yeah. We pressed "cash" on the  
21 button, so yes.

22 Q. Okay. Did you keep the payroll for Chinatown Takeout?

23 A. No.

24 Q. To your knowledge, how many employees were on the  
25 payroll of Chinatown Takeout?

1 A. At the time we had the two employees in the back.  
2 Once in a while somebody came to help when we were busy time,  
3 and then I had myself and one or two other employees, depending.  
4 I was able to handle a lot of the work.

5 Q. And were the back-of-the-house employees on the  
6 payroll that was kept by Chinatown Takeout?

7 A. I don't know. I don't have anything to do with the  
8 payroll.

9 Q. Did you ever physically give employees their pay?

10 A. Never. I didn't touch the money.

11 Q. To your knowledge, were front-of-the-house employees  
12 paid by cash or by check?

13 A. Everything -- I'm assuming everything was done by  
14 check. Again, I don't --

15 Q. To your knowledge, whether you know or not, do you  
16 know?

17 A. I am assuming by check.

18 Q. But do you know?

19 THE COURT: Don't -- don't assume.

20 THE WITNESS: Sorry.

21 THE COURT: If you don't know, it's okay to answer you  
22 don't know. If you know, if you were involved in --

23 THE WITNESS: I was not involved, so I guess no. So no.

24 BY MR. SCHWEITZER:

25 Q. And refresh my memory. You never gave

1 back-of-the-house employees their pay, either, correct?

2 A. Correct.

3 Q. And to your knowledge, were back-of-the-house  
4 employees paid by check or by cash?

5 A. I don't know.

6 Q. Do you know who did pay the back-of-the-house  
7 employees?

8 A. Everybody was paid by the owner.

9 Q. By "the owner" meaning your father, Yechiel Meiteles?

10 A. Yes.

11 Q. To your knowledge, did Tom ever pay any employees  
12 while you -- while --

13 A. I don't know.

14 Q. -- your father owned the business?

15 A. I don't know.

16 Q. Okay. Did you ever hire any employees to work at  
17 Chinatown Takeout?

18 A. Front of the house.

19 Q. And that was when you -- that was when the new owners  
20 took over the business, correct?

21 A. Correct.

22 Q. Did you hire any people thereafter?

23 A. After I left?

24 Q. After the first hiring when you took over the  
25 business?

1 A. Yes. Front of the house was turned over a few times,  
2 yes.

3 Q. Did you ever hire any back-of-the-house employees?

4 A. No.

5 Q. Did you ever fire any back-of-the-house employees?

6 A. No.

7 Q. Did you ever tell Tom to discipline any of the back-  
8 of-the-house employees?

9 A. No. It was my job.

10 Q. But you never actually did any discipline for the  
11 back-of-the-house employees, correct?

12 A. Correct.

13 Q. Did you ever fire anybody from Chinatown Takeout?

14 A. Yes. Front of house.

15 Q. Did you ever fire any back-of-the-house employees?

16 A. No.

17 Q. Who would hire and fire the back-of-the-house  
18 employees?

19 A. The owner.

20 Q. The owner being?

21 A. Say that again? Who would --

22 Q. When you refer to "owner," can you use the owner's  
23 name?

24 A. Yechiel.

25 Q. Thank you.



1           When the new owner took over the restaurant, did the  
2 locks on the restaurant change?

3           A.     The locks?

4           Q.     Yes.   The locks.

5           A.     Yes.   I --

6           Q.     Go on.

7           A.     No.    The front door lock changed.

8           Q.     What about the back door?   Is there a back door?

9           A.     Correct.   As well.

10          Q.     Did Tom have a key to the restaurant?

11          A.     No.    Not allowed to.

12          Q.     To your knowledge, did any employees of Chinatown  
13 Takeout work on days that the restaurant was closed to  
14 customers?

15          A.     They are not allowed to.   I had the key.   If I was  
16 there, it was open.   That was it.

17          Q.     While you were working at Chinatown Takeout  
18 restaurant, did you record your own time worked on a time  
19 recording system like a time clock?

20          A.     No.

21          Q.     Did you record your own time worked on a sign-in  
22 sheet?

23          A.     No.    I was a weekly -- I was a salaried employee, so I  
24 got paid by the week.

25          Q.     Okay.   What was your weekly salary?

1 A. It depended because my father helped me out with my  
2 rent. At first -- I had recently gotten married. I got married  
3 in 2010, so he was helping me out with my rent; and, you know,  
4 it was a little bit sporadic, but when it was just a straight  
5 week, it was -- he would give me 750.

6 Q. And how -- excuse me. And was there a regular payday  
7 that you would be paid the 750?

8 A. Again, it was a little bit different, but Friday  
9 pretty much.

10 Q. And were you ever paid on a day other than Friday?

11 A. Not unless it wasn't not a regular type of pay. He  
12 was helping me with the rent. Then I would ask, then he would  
13 pay whatever, whenever I needed that for the first of the month.

14 Q. What time of day on Friday would you be paid?

15 A. Closing. I honestly don't remember. It wasn't like a  
16 set day either morning or night before we left. If he would  
17 come in, depending on when he went to the bank.

18 Q. Certainly it was before sundown?

19 A. Oh, it has to be.

20 Q. While you were working at Chinatown Takeout, did you  
21 record the days that you worked even if you didn't record your  
22 time worked?

23 A. No.

24 Q. Did you have a day planner, anything like that?

25 A. No.

1 Q. Do you have any documents that would show the days  
2 that you actually worked at Chinatown Takeout?

3 A. No.

4 Q. Did you get a W-2 from Chinatown Takeout, Incorporated  
5 for the years 2011 or 2012?

6 A. Good question. I don't recall. I am assuming I did  
7 because I do my taxes. I started my first tax return in 2007,  
8 2007, so if I was getting paid, yes. The answer would have to  
9 be yes. I got paid, so I would have paid taxes.

10 Q. Do you remember whether you got a W-2 form or a 1099  
11 form?

12 A. I am sorry. I don't remember.

13 Q. Okay. But you did file personal income taxes --

14 MR. WEINREB: Objection to the line of questioning. What's  
15 the relevance?

16 THE COURT: What's the relevance?

17 MR. SCHWEITZER: He testified that he was a manager, that  
18 he was drawing a salary. I am trying to get at whether he  
19 actually drew a salary for the period in 2012.

20 THE COURT: He said he drew a salary for the time he worked  
21 there, which was 2011 to 2012. Do you have reason to believe he  
22 didn't draw a salary in 2012?

23 MR. TROY: Your Honor, if I may --

24 MR. SCHWEITZER: Certainly I have a reasonable -- I have  
25 reason to believe that he wasn't paid the -- excuse me -- for

1 each week that he worked in 2012 from his testimony.

2 THE COURT: Okay. So what's the relevance of this?

3 MR. TROY: Your Honor, may I answer?

4 THE COURT: Sure.

5 MR. TROY: We deserve to know whether or not he really work  
6 over there. So I don't think that he keep -- he say he never  
7 have any records, so we are going to get to know, you know, we  
8 are going to request the tax return.

9 THE COURT: No. It's -- you know what? This is not a case  
10 about his employment. This is a case about your plaintiffs'  
11 employment. I am --

12 MR. TROY: Yes.

13 THE COURT: I am overruling both your request --

14 MR. TROY: Your Honor --

15 THE COURT: Mr. Troy, my ruling stands, and I am sustaining  
16 the objection. Can we move on and get to the actual what this  
17 case is about?

18 MR. TROY: Your Honor, you did not hear my objection  
19 complete, I think.

20 THE COURT: Mr. Troy, your objection is duly noted.

21 MR. TROY: No, Your Honor, I did not say the completed yet.

22 THE COURT: Mr. Troy.

23 MR. TROY: Yes.

24 THE COURT: We are not going on to whether this witness was  
25 paid or not paid.

1 MR. TROY: Yes. Your Honor, I agree, but we need to  
2 impeach his credibility. Whether or not he was work over there,  
3 it's irrelevant.

4 THE COURT: Mr. Troy, relax. Calm down. I will not take  
5 that behavior whether there is a jury here or not. I do  
6 not like -- the antics and the theatrics are unacceptable. We  
7 have gone through discovery. We are not going through discovery  
8 again. We are at the trial of this case. Whatever you have you  
9 can use to impeach. Your witnesses can testify. It is for me  
10 to make a credibility determination. We are not getting into  
11 whether he filed taxes or didn't file taxes. His testimony is  
12 what his testimony is. You can bring out he has no records, but  
13 that's it. Let's move on.

14 BY MR. SCHWEITZER:

15 Q. Did you invest any capital into Chinatown Takeout,  
16 Incorporated?

17 A. No.

18 Q. To your knowledge, were you listed as an officer of  
19 Chinatown Takeout, Incorporated on any documents?

20 A. I don't know, but I doubt it. I wasn't the owner. I  
21 was a manager.

22 Q. To your knowledge, were you listed as an employee of  
23 Chinatown Takeout, Incorporated on that corporation's state tax  
24 returns?

25 A. I don't know.

1 Q. Did you have any role in preparing the corporate tax  
2 returns for Chinatown Takeout, Incorporated?

3 A. No. I was a manager. I didn't deal with any of that.

4 Q. Did you provide payroll information to an accountant  
5 used by Chinatown Takeout, Incorporated?

6 A. I had nothing to do with payroll.

7 Q. Did you have access to the corporate bank account for  
8 Chinatown Takeout, Incorporated?

9 A. No.

10 Q. You never withdrew any money from the corporate bank  
11 account?

12 A. I did not have access.

13 Q. Did you make purchase of restaurant supplies?

14 A. No.

15 Q. Who did?

16 A. I placed the order, which was fulfilled by the owner.

17 Q. So the owner would pay the money, but you would place  
18 the order?

19 A. Correct.

20 Q. Did you have to make sure that there was enough money  
21 in the corporate account before you placed an order?

22 A. I had no access.

23 Q. What time of day did Tom leave the restaurant each  
24 day?

25 A. At closing, 10:00.

1 Q. Except on Fridays?

2 A. Correct.

3 Q. And Mr. Shao would always leave with Tom?

4 A. He had the choice to do whatever he wanted to do,  
5 whether to take a ride or go with Tom, and he would leave with  
6 Tom most of the days or majority of the time, yes.

7 Q. You, personally observed Mr. Shao leaving with Tom  
8 each day?

9 A. Again, not every day. I don't -- can't tell you every  
10 single day I was there if they left together. I was still in  
11 the restaurant when they walked out the door, so I cannot say  
12 that I observed them walking into a car together, but I can tell  
13 you that they left at 10:00.

14 Q. Did you ever personally observe Mr. Shao smoking?

15 A. Yes. Front of the house and back of the house. Every  
16 day they had a cigarette.

17 Q. "They," that's -- I am referring to Mr. Shao  
18 specifically. Did you ever --

19 A. By "they", I meant the employees, but yes.

20 Q. How many cigarettes would Mr. Shao take each day?

21 A. I don't know.

22 Q. At least one each day?

23 A. I don't know.

24 Q. But you personally observed him?

25 A. Yes.

1 Q. Before Passover in 2012, did you inspect your uncooked  
2 rice for contamination with water?

3 A. I don't understand the question.

4 Q. Do you need me to repeat it or would you like --

5 A. I don't understand what -- if you could rephrase it, I  
6 don't understand the question.

7 Q. Before Passover on 2012 -- withdrawn.

8 Before Passover on 2012, did you require employees to  
9 throw out uncooked -- any uncooked rice in the restaurant?

10 A. I mean, we made a fresh pot of rice every single day.

11 Q. That's not the question I asked.

12 Are you -- are you able to keep grains or forbidden  
13 foods on Passover in your possession over the course of  
14 Passover?

15 A. No. I have to sell the restaurant. From Jewish  
16 law --

17 Q. Okay.

18 A. -- I have to go to the rabbi. The rabbi has to -- I  
19 have to fill out a specific form. He has to sell off the  
20 restaurant for the eight, nine days, and then I can come back  
21 after Passover is done and start from scratch everything.

22 Q. So during Passover did you -- did you have any  
23 uncooked rice in the restaurant?

24 A. Uncooked rice?

25 Q. Uncooked.



1 A. Yes. Yes.

2 Q. Did you have any -- you mentioned fortune cookies  
3 before. Did you have any fortune cookies at the restaurant  
4 during Passover?

5 A. Yes.

6 Q. Did you have any -- did the restaurant use any wheat  
7 flour to prepare its -- to prepare its menu items?

8 A. I don't know.

9 Q. Did you require employees to throw out any food items  
10 in the restaurant before Passover in order to keep it clean  
11 during Passover?

12 A. We -- at the end of the shift the last day I cleaned  
13 up, and took anything that was fresh and put it in and threw it  
14 away, and then kept -- that was it.

15 Q. Was that cleanup any different than the usual cleanup  
16 that was done at the end of a shift?

17 A. Maybe scrubbed the place down.

18 Q. Yes or no? Yes-or-no question: Was it different or  
19 not?

20 A. Yes.

21 Q. How was it different?

22 A. We spent a little more time scrubbing, so when we came  
23 back nine dates later, the place was fresh.

24 Q. About how much more time?

25 A. Couple of hours.

1 Q. When you mentioned that before Passover you had to  
2 sign a form with the rabbi, what did that form certify?

3 A. That we were selling the restaurant.

4 Q. What do you mean by "selling the restaurant"?

5 A. Again, this is a more difficult Jewish law. I can  
6 explain, but I actually can't explain very well, but basically,  
7 in order -- when -- I mean, we do it for our own houses as well  
8 and our own personal items, but we are not allowed to own or  
9 have in our possession certain diet -- certain foods, flour  
10 being one of them, and rice and certain foods.

11 So one of the ways to do it, obviously, not to empty  
12 out our entire house because that would be a little bit crazy to  
13 have us do that every single year. So we would sell it off to a  
14 non-Jewish person, and that would be facilitated by the rabbi,  
15 and that person would sell it back to us right when Passover is  
16 done. About an hour after Passover is over, you own all of your  
17 stuff back and everything is yours like nothing happened.

18 Q. I see. Did you pay a locksmith to change the locks on  
19 the restaurant when you purchased the restaurant?

20 A. I don't know. That's the owner's question.

21 Q. Okay. After you left your employment with the  
22 restaurant, would you know who had a key to the restaurant?

23 A. We had hired another Orthodox Jew to run it because  
24 you have to always have an Orthodox Jew on premises. So we  
25 hired another manager that was Orthodox, and he would pretty

1 much do what I did, including the key. So at that point, that  
2 manager, who was Orthodox, had the key to the restaurant only.

3 Q. And by "do what you did," do you mean inspect the eggs  
4 for the blood spot and --

5 A. For everything that we discussed.

6 Q. -- inspect the celery for bugs, but not take calls for  
7 the restaurant, for example?

8 A. What do you mean by take calls?

9 Q. You testified before that you would take customer  
10 orders over the phone?

11 A. Yes. They would do that, too, of course.

12 Q. They would do that, too? Okay.

13 A. A manager's role is to do a little bit of everything,  
14 whatever is needed.

15 Q. And to your knowledge, did your replacement pay  
16 employees?

17 A. Nobody other than the owner paid the employees.

18 Q. And you know that even though you stopped working at  
19 the restaurant in 2012?

20 A. Yes.

21 MR. SCHWEITZER: Okay. May I confer with my co-counsel for  
22 a minute?

23 THE COURT: Yes.

24 MR. SCHWEITZER: Thank you.

25 (Pause)

1 BY MR. SCHWEITZER:

2 Q. You mentioned that each day you would count the cash  
3 on hand generated by the restaurant, correct?

4 A. Uh-huh.

5 Q. And you would also compare to the point-of-sale  
6 system?

7 A. And the credit card system, yes.

8 Q. And the point-of-sale system would show the gross  
9 revenue made in a day?

10 A. Yes.

11 Q. To your recollection, how much money did Chinatown  
12 Takeout make in each day gross?

13 A. I don't know. I can't recall that. I don't know the  
14 number. It was a long time ago, six years ago.

15 Q. Can you give a ballpark?

16 A. I mean, no. Every day was different.

17 MR. WEINREB: Objection to the relevance.

18 THE WITNESS: Sundays were different than Wednesdays, and  
19 no. I can't give you a relevant -- a ballpark.

20 THE COURT: All right.

21 MR. SCHWEITZER: Okay. I don't have anything more.

22 THE COURT: Thank you very much.

23 (Pause)

24 THE COURT: Okay. I am going to ask a couple of questions  
25 before we let the witness go.

1       So you worked there for a period which was slightly over a  
2 year, from June of 2011 to September -- sometime September of  
3 2012.

4       THE WITNESS: Yes, Your Honor.

5       THE COURT: During that time, did you take a vacation other  
6 than the Jewish holidays?

7       THE WITNESS: That was my vacation.

8       THE COURT: Did you have a day off here or there?

9       THE WITNESS: Never.

10       THE COURT: Except for the Jewish holidays?

11       THE WITNESS: I couldn't take a day off because of the  
12 issue with the key.

13       THE COURT: Okay. Was there anybody else who could have  
14 had the key and -- like another Orthodox Jew that could have  
15 covered for you on that?

16       THE WITNESS: Yes. My father.

17       THE COURT: Okay.

18       THE WITNESS: The owner, because he had the key.

19       THE COURT: Any time -- and during the time that you were  
20 there, did you come open up, do your work and then leave and  
21 then come back later or were you there all the time?

22       THE WITNESS: Full-time manager on premises.

23       THE COURT: Okay. Any other questions, Mr. Schweitzer or  
24 Mr. Weinreb?

25       MR. SCHWEITZER: Okay.

1 MR. TROY: I have two questions.

2 CROSS-EXAMINATION

3 BY MR. TROY:

4 Q. Have you ever to give the payment of Mr. Shao to Tom  
5 and then have Tom to give to Mr. Shao?

6 A. I didn't have anything to do with the money.

7 Q. Okay. You are talking about you often get 750 per  
8 week; is that after tax or before tax?

9 MR. WEINREB: Objection. He said he has nothing to do with  
10 the money.

11 THE COURT: No. This is regarding his receipt --

12 MR. WEINREB: Oh.

13 THE COURT: -- and his payroll.

14 THE WITNESS: The check said 750.

15 MR. TROY: Pardon?

16 THE WITNESS: The check said 750.

17 BY MR. TROY:

18 Q. Okay. So you get a -- you get --

19 THE COURT: Mr. Troy, this is highly unusual. Usually the  
20 plaintiffs have one attorney questioning a witness, and we have  
21 now two attorneys questioning the witness.

22 MR. TROY: I just thought I say I have two or three  
23 questions.

24 THE COURT: Okay. If you leave it to two or three, I am  
25 going to give you the privilege of doing that. You already

1 asked two, so you can ask one or two more, but this is -- I  
2 don't want this to be how the trial goes. I am going to let it  
3 happen today, but when we start on Monday, you designate someone  
4 to ask the questions.

5 BY MR. TROY:

6 Q. So do you know --

7 THE COURT: And stand in front of a microphone because the  
8 reporter cannot hear you if you don't stand in front of a  
9 microphone, and do not move around.

10 MR. TROY: Sure.

11 BY MR. TROY:

12 Q. Do you -- so did you seven -- did you get a pay for  
13 the 750, is that 750 subject to the tax withholding?

14 A. Can you please repeat?

15 Q. Huh?

16 THE COURT: I don't think the question is clear, so  
17 rephrase the question.

18 MR. TROY: Okay.

19 THE COURT: I wasn't a hundred percent sure what you meant.

20 BY MR. TROY:

21 Q. Is your pay 750 subject to the tax withholding?

22 A. Subject to taxable holding?

23 Q. Yes. Payroll withholding.

24 THE COURT: Are you saying was the taxes -- was 750 before  
25 taxes were taken out or after taxes were taken out?

1 MR. TROY: Yes.

2 THE WITNESS: It was after taxes were taken out because  
3 that's how it was done.

4 BY MR. TROY:

5 Q. Okay. Okay. So do you know how much is your tax  
6 withholdings when you received 750 per week?

7 A. I do not know that number.

8 Q. Okay. Can you recall how much money -- you filed a  
9 tax return directly from the Chinatown Takeout --

10 MR. WEINREB: Objection.

11 MR. TROY: -- restaurant in 2011 and 2012?

12 MR. WEINREB: Objection. This is the same issue we had  
13 before.

14 THE COURT: I am going to sustain the objection.

15 You don't have to answer that.

16 MR. TROY: We object to the Judge's ruling because, you  
17 know, we don't think that this manager working for that long,  
18 and I believe the record of his employment is going to show  
19 whether or not he work over there, or whether or not --

20 THE COURT: I am sure your witnesses will also tell that,  
21 and I will be able to make a credibility determination. I am  
22 not going to get into looking at tax returns. They won't really  
23 tell me anything. They are going to tell me how much he  
24 declared that year, but it doesn't tell me how many hours he  
25 worked. So they are not helpful. So your objection is duly



1 noted.

2 I think you have asked your two or three questions. When  
3 we start on Monday, there will be one attorney from each side  
4 asking questions.

5 Mr. Weinreb, any further questions for this witness?

6 MR. WEINREB: No questions, Your Honor.

7 THE COURT: Okay. So thank you very much, and you can step  
8 down.

9 THE WITNESS: Thank you, Your Honor.

10 (Witness steps down)

11 THE COURT: I appreciate it. I don't think there is  
12 anything further we need to do today except I want to just be  
13 clear on what I expect on Monday.

14 I know Mr. Troy very much wants to have an opening  
15 statement, so we are going to start with short opening  
16 statements on Monday.

17 Before we start with the opening statements, I just want  
18 Mr. Weinreb to look at his proposed findings of fact, which are  
19 Docket Number 75, which was filed on July 24, 2018. I want Mr.  
20 Weinreb to please look at the last page, page 15, under Offer of  
21 Judgment. I want you to read that section, and let me know if  
22 it's -- we made one change already. I want to make sure that  
23 there are no other changes you want me to make.

24 MR. WEINREB: Thank you, Your Honor.

25 THE COURT: Okay? So we will do that on Monday. That will

1 be the first thing we do, and then after, we will start with  
2 opening statements and continue on with the witnesses. I would  
3 hope that this goes quickly, a little bit more quickly than it  
4 went today.

5 I will not be taking breaks every time between  
6 cross-examination and direct, so I want everybody to be prepared  
7 to go. I will take short breaks when we need it, but I don't  
8 want that to be the plan that every time we need, we go because  
9 that eats up a lot of time over time.

10 And just so we run smoothly, we will have one person doing  
11 the questioning of the witness. Who it is is up to counsel, and  
12 I don't think there is anything further we need to do today, is  
13 there?

14 Please have all of your witnesses here on Monday. And what  
15 time did we say we are starting? 9:00? Let's start at 9:00 on  
16 Monday. So be here by 8:45. I want to start promptly at 9:00  
17 because I have a short telephone conference I have to take at  
18 10:00. So be here before 9:00 so we can start promptly at 9:00.  
19 Okay? Thank you.

20 (Time noted: 12:17 p.m.)  
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